

Appl. No.: 10/088,260
Response dated June 4, 2004
Reply to Office action of March 8, 2004

Remarks

Favorable consideration and allowance of the instant application is respectfully requested in view of the following remarks.

Claims 11-25 are pending in this application

The Examiner's rejections, as they pertain to the patentability of the claims, are respectfully traversed.

Claims 11-25 are rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C § 103(a) as obvious over, DE 3228479. This rejection is respectfully traversed for the following reasons.

With respect to the 102(b) rejection, Applicant would like to note that it is very well settled that a factual determination of anticipation requires the disclosure, in a single reference, of each and every element of the claimed invention, and an Examiner must identify wherein each and every facet of the claimed invention is disclosed in the applied reference. See, *In re Levy*, 17 USPQ2d 1561 (Bd. Pat. App. & Inter. 1990). Applicant respectfully submits that the DE '722 reference fails to anticipate the claimed invention on the grounds that it fails to disclose each and every element thereof.

More particularly, the DE '479 reference fails to disclose the presence of a disintegrating agent in its formulation. As a result, since this element of the claimed invention is not disclosed, this reference cannot serve to anticipate the present invention. Accordingly, reconsideration and withdrawal of this aspect of the rejection is respectfully requested.

As for the obviousness rejection, Applicant would like to note that in order to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references

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or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure [underline emphases added]. See, *Manual of Patent Examining Procedure*, Rev. 3, July 1997, section 2142, page 2100-108.


Applicant respectfully submits based on the fact that the '479 reference fails to contain any teaching, suggestion or motivation relating to the presence of a disintegrating agent in its formulation, it should not be deemed to render the claimed invention prima facie obvious. As a result, reconsideration and withdrawal of this aspect of the rejection is respectfully requested.

It is believed that the foregoing reply is completely responsive under 37 CFR 1.111 and that all grounds for rejection are completely avoided and/or overcome. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

The Examiner is requested to telephone the undersigned attorney if any further questions remain which can be resolved by a telephone interview.

Respectfully submitted,

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